

STATE OF MICHIGAN  
COURT OF APPEALS

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KEITH WINELAND,

Plaintiff-Appellant,

v

GIORA ADAM, M.D.,

Defendant-Appellee.

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UNPUBLISHED

January 31, 2003

No. 234607

Ingham Circuit Court

LC No. 00-092725-NH

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) in this medical malpractice action. We affirm.

Plaintiff filed a medical malpractice complaint that was accompanied by an unsworn affidavit of merit. Defendant, in an affirmative defense, claimed that the affidavit of merit did not comply with the requirements of MCL 600.2912d. Subsequently, defendant moved for summary disposition under MCR 2.116(C)(7), claiming that the unsworn affidavit of merit was defective because it did not contain a jurat<sup>1</sup> signed by someone authorized to administer oaths. Therefore, defendant argued, under this Court’s decision in *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703; 620 NW2d 319 (2000), it was not a proper legal affidavit. The trial court granted summary disposition to defendant and dismissed the complaint, agreeing that, under the *Holmes* decision, the unsworn affidavit was not sufficient and that plaintiff’s subsequent efforts to correct the deficiency by filing a notarized affidavit after the period of limitation had expired were ineffective. See also MCR 2.113(A) (all affidavits filed must be verified by oath or affirmation).

We agree with the trial court that resolution of this case is controlled by our decision in *Holmes*. The affidavit of merit plaintiff filed with his complaint did not contain a signed jurat and was therefore not an affidavit as required by the statute. *Id.* at 711. Thus, plaintiff’s complaint, filed without an affidavit of merit, was insufficient to commence his medical

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<sup>1</sup> A jurat is “simply a certificate evidencing the fact that the affidavit was properly made before a duly authorized officer. . . .” *Wise & Rich v Yunker*, 223 Mich 203, 206; 193 NW 890 (1923) (quotation omitted).

malpractice action. *Id.* at 709; *Scarsella v Pollak*, 232 Mich App 61, 64; 591 NW2d 257 (1998).<sup>2</sup> Plaintiff failed to correct this deficiency before the period of limitation expired. Accordingly, plaintiff's complaint was time-barred and the trial court correctly granted summary disposition to defendant. *Holmes, supra* at 714.

We find no merit in plaintiff's attempts to distinguish *Holmes* and *Scarsella*. Likewise, plaintiff's remaining arguments are without merit.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

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<sup>2</sup> We note that *Scarsella v Pollak*, 232 Mich App 61, 64; 591 NW2d 257 (1998), was explicitly affirmed by our Supreme Court. 461 Mich 547 (2000).